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Inter-Branch Relations in US Trade Policymaking: Balance of Power or Authoritarian Drift?

Les relations inter-branches dans l'élaboration de la politique commerciale américaine : équilibre des pouvoirs ou dérive autoritaire ?

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01. Introduction

1 Reclaiming Congressional Authority Trade Act (S. 899), the Global Trade Accountability Act (H.R. 723), Level the Playing Field in Global Trade Act (S. 1747), Promoting Responsible and Free Trade Act (H.R. 3673), Bicameral Congressional Trade Authority Act (S. 287), US Reciprocal Trade Act (H.R. 764), Self-Initiation Trade Enforcement Act (S. 564): under the radar of news headlines on President Trump's trade wars, the year 2019 saw a proliferation of trade bills designed to alter the course of US trade policy on behalf of fairness, reciprocity, accountability or sustainability. While many of them sought to reassert congressional authority over trade policymaking (S. 899, H.R. 723, S. 1747, S. 287), a few bills summoned the Executive branch to intensify its efforts to defend America's economic interests against other countries' unfair trade practices (H.R. 764, S. 564). This invisible outburst of congressional activity in a period characterized by legislative impasse not only reflected the deep political divisions over President Trump's America First policy but was also the latest incarnation of the hyperpolarization of American politics.

2 Admittedly, partisanship has long been a central feature of trade politics, as illustrated by the rich literature on determinants of congressional trade votes[1] and by the fierce debates over the terms of trade liberalization in the 1990s and twenty-first century (Shoch, 2001; Destler, 2005, chapter 11). Yet, beyond the polarizing effects of the Trump presidency, the power struggle over the conduct of American trade policy stemmed from antagonistic pressures inherent to the international political economy of the

twenty-first century, with implications far beyond US domestic politics. In an illustration of Rodrik's "globalization paradox," the search for regulatory harmonization has collided with the will to protect democratic governance, thereby exacerbating interbranch conflicts (Rodrik, 2012; see also Velut & Dalingwater, 2018). First, the advent of a multipolar world has generated new demands for a stronger response from the Executive branch. In other words, rising competitive pressure stemming from the emergence of rivaling economic powers has created a need to centralize trade powers and pursue a more aggressive trade agenda among industrialized countries. As this article will show, this agenda has been deployed both offensively, as witnessed by the race for trade agreements across the globe (Dür, 2010, Velut, 2018; Deblock & Lebullenger, 2018), and defensively, through an array of protective measures, whose use has fluctuated since the early debates on Japanese competition.

3 Second, the ever-expanding scope of the "trade" agenda and its "regulatory turn" has mobilized a growing constellation of civil society stakeholders and, in conjunction, prompted attempts to assert parliamentary oversight over the conduct of trade negotiations (Laursen & Roeder-Rynning, 2017). As attested by the increasing participation of environmental, human rights, health, or digital rights advocates in trade debates, the political economy of trade can no longer be reduced to factor-based and sector-specific models (Velut, 2018; Deblock & Lebullenger, 2018). Likewise, the increasing complexity of trade agreements means that the voice of Congress cannot be reduced to a referendum over free trade or protectionism but is also raised to preserve legislative prerogatives over the regulation of state-market relations in a broad range of policy spheres.

4 This article analyzes the growing interbranch conflicts inherent to the design of US trade policymaking and the search for a balance of power between the legislative and the executive branches amidst growing debates on the merits of globalization. To do so, it first traces the origins of these conflicts and establishes the 1974 Trade Act as an underappreciated turning point for interbranch conflicts. Second, it situates these institutional conflicts temporally across different trade policy instruments to reveal that congressional oversight is less likely to occur with protective measures than trade-liberalizing policies. Finally, it explores the drivers of executive-legislative contention and assesses its complex relations with partisan polarization. The article is divided into three sections. The first revisits the Trade Act of 1974 to understand its institutional legacy for contemporary debates on globalization and trade policy. The second part puts these questions to the test by analyzing the manufacturing of US FTA policy in the post-NAFTA era, while the third scrutinizes the dynamics of inter-branch relations concerning the administration of US trade remedies.

02. The origin of the conflict: the Janus-faced nature of the Trade Act of 1974

5 From an institutional standpoint, the history of American trade policy is often divided into two eras: a period a congressional dominance over trade policy (1776-1934) when lawmakers maintained protective tariffs on behalf of American business interests and workers; and a period of shared powers (1934 to today), when Congress delegated its tariff-setting authority to the Executive branch to protect itself from protectionist

pressures (Destler, 1986). Under this framework, the Reciprocal Trade Agreements Act of 1934 (RTAA) is often depicted as an institutional earthquake that allowed the United States to embrace a new era of trade liberalization under Executive leadership (Goldstein, 1986; Haggard, 1988).

6 Amidst students of US trade politics, the historical legacy of the RTAA has long overshadowed the Trade Act of 1974 (hereafter 1974 TA), despite the latter's remarkable significance for contemporary debates over globalization and democracy. Yet, the 1974 TA first crystallized the tensions over the democratic governance of American trade policy in an era of declining US economic primacy. To understand its long-term stakes, it is important to examine both the roots and the content of the 1974 TA.

7 With the increasing scope given to non-tariff barriers in trade negotiations in the 1960s, Congress grew more reluctant to delegate its constitutional powers, lest the Executive branch might encroach upon its legislative prerogatives. Thus, in 1966, the Senate passed a resolution instructing the administration of Lyndon Johnson against negotiating "non-tariff commitments." These included the "American Selling Price" method that inflated the prices of imported goods, as well as the negotiation of a new anti-dumping code at GATT. This was a first signal of rising tensions between the two branches. When President Johnson ignored congressional injunctions, Congress refused to implement non-tariff barriers (NTB) reforms.[2] Thus, the Executive's efforts to establish reciprocal rules for the international trading system conflicted with Congressional attempts to preserve its constitutional role in US decision-making in the face of an expanding trade-negotiating agenda.

8 This first standoff is what prompted the Nixon administration to request greater trade-negotiating power. The 1974 Trade Act sought to find a compromise between empowering the Executive branch to undertake increasingly complex trade negotiations while preserving congressional authority over trade policy. This new delegation of power was driven by Washington's search for fairness and reciprocity amidst rising concerns over the proliferation of non-tariff barriers in Europe and Asia.[3] Thus, in a bipartisan fashion, Congress agreed to expand the trade powers of the Executive branch, even though the new negotiations would ultimately intrude in a wide range of regulatory fields traditionally under the purview of Congress and/or the states.[4] The result was a compromise that, paradoxically, empowered the Executive branch while reinforcing congressional oversight, creating a Janus-faced or "hybrid" apparatus that would sustain tensions within the decision-making process in forthcoming decades.

9 Executive empowerment in trade policymaking took four forms: 1) the broadening of negotiating powers; 2) increased discretion over protective measures; 3) a progressive build-up in institutional capacities; 4) new limitations on congressional oversight. First, the President's negotiating mandate was expanded to non-tariff barriers. In this sense, the 1974 TA was a logical response to the new competitive challenges that the US faced in Western Europe and Asia. However, throughout the text of the 1974 TA, barriers and distortions of trade remained so ill-defined as to give almost unlimited scope to the President's new trade-negotiating agenda.[5] The second step consolidating the Executive's authority in trade policymaking was the strengthening of the Special Representative for Trade Negotiations, placed in the Executive Office of the President by law and given cabinet rank under the 1974 TA, the first step before its reinforcement

five years later under the name of Office of the US Trade Representative (USTR).[6] The third sign of executive empowerment was the creation of fast track authority, under which Congress accepted to limit its control over the ratification process by submitting trade deals to a yes-or-no vote within 90 days with no amendment.

10 Fourth, the 1974 TA was a pivotal point that expanded presidential powers over trade remedies in at least three ways: 1) by creating a new "balance of payments" authority under section 122; 2) by granting the President with terminal and withdrawal authority under section 125;[7] and 3) by establishing new powers to tackle import barriers or discriminatory practices under the notorious section 301. In a sense, the broad terms of section 301[8] went far beyond the temporary delegation of negotiating authority under the fast track and gave the President broad discretion to target unfair trade practices. In effect, Congress explicitly entrusted the President to act as the guardian of US economic interests.

11 In the short term, these provisions of the 1974 TA empowered the Executive branch to tackle the non-tariff barriers that became central to the US-Japan confrontation over "unfair trade" – the Tokyo Round being the first attempt to address these concerns at GATT. In the long run, these new powers would enable the US administration to stand at the center of multilateral negotiations and, from the 1980s on,[9] to become a driving force for the "new wave of regionalism" of the 1990s, and the ambitious deep integration agenda of the twenty-first century.[10] Thus, the 1974 TA would allow Washington to stay on the course of trade liberalization in the face of rising domestic concerns over the international competition while strengthening executive power to fight against foreign trade practices deemed to be unfair.

12 Yet, far from a blank check to the Executive branch, this trade law also included important provisions to ensure congressional oversight over the Executive. First, unlike the congressional delegation under the RTAA, Congress reclaimed power over the implementation of trade bills, thereby retaining a degree of control over the terms of trade agreements after their signature. Second, at the other end of the trade negotiating process, the Trade Act of 1974 (sections 103 and 104) established negotiating objectives that the Executive branch had to fulfill. Although these were neither specific nor binding at the time,[11] they would set the ground for the definition of more specific objectives in the future and would become increasingly constraining over time.[12] Third, Congress required the President to consult with the House Ways and Means Committee and the Senate Finance Committee during the negotiations (section 102c) and appointed 10 members as advisers to the trade-negotiating delegation (from 5 members under the 1962 TEA), once again setting a precedent for tighter consultation rules in the future (Fergusson, 2015). Fourth, Congress admonished the President to inform and seek advice from the International Trade Commission (formerly Tariff Commission) as a prerequisite for negotiating offers on tariff duties and from the Departments of Agriculture, Commerce, Defense, Labor, State the Treasury and the USTR (sections 131, 132 and 134). Finally, the tremendous powers granted to the Executive under sections 125 and 301 remained under congressional oversight, requiring notification from the Executive before action and even allowing Congress to annul the President's decision.[13] This showed that despite expanded Executive powers, Congress retained the final say over trade policymaking, following its constitutional prerogatives.

13 This brief analysis of the institutional framework of the TA1974 shows that questions of congressional oversight and accountability were as crucial as the perceived imperative to further delegate trade-negotiating authority to the Executive in the face of intensifying competition. The Trade Act of 1974 crystallized these tensions between the search for reciprocity and the demands of democratic governance and set many precedents upon which future trade reforms would build. These precedents covered the whole duration of the trade-negotiating process, ranging from the definition of negotiating objectives to notification and consultation requirements to greater control over the implementation of trade agreements. The other paradox of the 1974 TA is that while Congress gave the green light to the Executive branch to promote trade liberalization by tackling NTBs, it also set the ground for new protectionist battles both by loosening eligibility for import relief and creating new trade defense instruments under the purview of the Executive branch. These institutional mechanisms epitomized the logic of shared powers in US trade policymaking. Yet, only a few decades later, they would turn American trade policy into a constant struggle between the executive and the legislative branches, be it over the negotiation of trade agreements or the adoption of trade remedies.

03. Assessing congressional oversight over FTA policy

3.1 Institutional reforms: toward greater accountability?

14 If the 1974 TA considerably strengthened Executive discretion in trade negotiations, subsequent reforms in 1979 (Trade Act), 1984 (1984 Omnibus Trade Tariff Act), and 1988 (Omnibus Trade and Competitiveness Act) also confirmed congressional determination to retain control over the negotiation of trade agreements. The development of America's FTA policy since the 1990s has tested the logic of codetermination. From an institutional standpoint, the stormy debates surrounding the ratification of the North American Free Trade Agreement (NAFTA) were an apt reminder of the legacy of the 1974 TA: the Executive branch's venturing into new policy realms (investment protection, government procurement, intellectual property) for geostrategic purposes triggered a fierce legislative battle over the terms of NAFTA, and more specifically over its labor and environmental provisions. This power struggle over the terms of trade agreements would become a recurrent pattern over the next three decades, shaped by partisan dynamics, electoral factors, and sectoral forces.

15 US lawmakers' ambivalence about trade liberalization was not confined to the terms of trade agreements but also challenged the very logic of fast track authority, as witnessed by Bill Clinton's failure to obtain trade negotiating powers in 1997 and 1998. Admittedly, partisan politics already informed voting behavior in both cases (Barfield, 1998; Bardwell, 2000; Conley, 1999). Interestingly, this set of legislative setbacks did not prevent the Democratic presidential to negotiate what was arguably one of the most consequential trade deals in US history, i.e. the terms of China's accession to the World Trade Organization. Yet, with or without fast track, interbranch conflicts were also at play insofar as the Permanent Normalization of Trade Relations with China deprived Congress of its yearly review of China's Most Favored Nation (MFN) status, something that had become a contentious ritual in the aftermath of the 1989 Tiananmen Square massacre.

16 Thus, the tumultuous globalization debates of the 1990s prompted Congress to reassert its authority over trade policymaking. This rebalancing process between the executive and the legislative branches was deployed in three steps: the 2002 Bipartisan Trade Promotion Authority Act (BTPAA), which contributed the most to strengthening congressional oversight, the May 10th Deal of 2007, more concerned with the substance of FTAs than the decision-making process,[14] and the 2015 Bipartisan Comprehensive Trade Priorities and Accountability Act (BCPTAA), which imposed new obligations on the Executive branch. These institutional reforms were not merely concerned with finding the right balance between economic leadership and democratic accountability. Under the façade of bipartisanship, they were also driven by partisan interests: while Democratic lawmakers sought to reign in George W. Bush's competitive liberalization agenda in both 2002 and 2007; the 2015 trade reform passed under a Republican majority was designed to reassert congressional oversight in the context of Barack Obama's TPP and TTIP negotiations. However, each party remained divided over trade liberalization, showing that interbranch conflicts transcended partisan politics.

17 **Table 1** summarizes the development of the US trade policy process since the 1974 TA and its impact on inter-branch relations. It reveals that while Congress initially accepted to expand the delegation of trade-negotiating power to the Executive branch to allow it to take the lead in bilateral, regional and multilateral negotiations, it has also sought to maintain a tight grip on trade agreement policy at all stages of the decision-making, i.e. before, during and after negotiations.

18 *Before the negotiations*, Congress first decides whether or not to grant the President with fast track or trade promotion authority, in effect defining how ambitious trade negotiations may be.[15] Lawmakers intervene before negotiations by requiring the President to notify congressional committees of his intent to negotiate a trade agreement 60 days before entering the negotiations. Here, under the so-called "gatekeeper" provision, one of the congressional committees can deny fast track consideration if it disapproves of the negotiations. In addition to the consultation of congressional committees, the 2002 BTPAA established a new Congressional Oversight Group composed of members of congressional committees, with which the USTR has to coordinate before the negotiations.[16] A third key instrument for Congressional input before the negotiations is the prescription of a list of negotiating objectives which, since the 1974 TA, has not only grown exponentially but has also become more binding. Today, these objectives are divided into 12 overall trade negotiating objectives, 21 principal trade negotiating objectives covering a wide range of sectors and policies, and 4 capacity building other priorities.[17]

Table 1: Changing power dynamics in trade agreement policy

	PROVISIONS TOWARD : EXECUTIVE EMPOWERMENT	PROVISIONS TOWARD INCREASED CONGRESSIONAL OVERSIGHT
1974 Trade Act	• Negotiating mandate is expanded to NTBs • Fast track authority is created and granted until 1980: it limits congressional ratification to yes-or-no vote within 90 days. • STR is given cabinet rank • President can withdraw from trade agreements under section 125	• Congress reclaims power to implement trade bills • Negotiating objectives are defined by Congress • New notification and consultation requirements are imposed on the President • Congressional committee members and aides are made official advisers of the negotiations
1979 Trade Act	• Fast track authority is renewed until 1988 • STR is strengthened in size and power and becomes USTR	
1984 Omnibus Trade and Tariff Act	• Executive allowed to undertake negotiations of bilateral trade agreements	• Congress requires the President to notify committees of intent to negotiate trade agreements 60 days before entering negotiations • Congressional committees can deny fast track authority if any committee disapproves of the negotiations
1988 Omnibus Trade and Competitiveness Act	• Fast track authority is granted until 1991	• Congress can deny if it deems that the USTR failed to consult Congress adequately • List of negotiating objectives is extended in the prospect of NAFTA negotiations
2002 Bipartisan Trade Promotion Authority Act	• Fast track is renamed trade promotion authority and granted until 2007	• Extensive list of negotiating objectives divided in a three tier-system • Progress in fulfillment of negotiating objectives becomes a condition for entering a trade agreement. • Strict requirements and guidelines regarding notification and consultation: consultation is explicitly defined as conditions for entering a trade agreement. • Creation of Congressional Oversight Group composed of members of congressional committees, which the USTR must consult before, during, and after negotiations. • Congress retains the right not to implement trade bills "for lack of notice or consultation."
2015 Bipartisan Comprehensive Trade Priorities and Accountability Act	• Trade promotion authority is granted until 2021	• Updated trade-negotiating objectives in congruence with the May 10, 2007 agreement. • New Consultation and Compliance Resolution (CCR) procedure allow either chamber to withdraw the expedited procedure for an implementing bill only in that chamber. • Tighter language for transposition of trade agreement into implementing bill. The language changed from provisions "necessary or appropriate to implement the agreement" to "*strictly* necessary or appropriate," albeit without defining these two terms. For a discussion, see Fergusson 2015. • Creation of Chief Transparency Officer

Source: Author's compilation from Trade Act of 1974 (P.L. 93-618), Bipartisan Trade Promotion Authority Act of 2002 (P.L. 107-210), as well as Fergusson (2015); Fergusson & Davis (2019)

19 Somewhat paradoxically, this new set of constraints on the executive branch also explicitly expanded its negotiating mandate to new policy spheres such as transparency rules and electronic commerce. Yet, unlike the 1974 TA, which had made this list non-binding, the 2002 BTPAA defined progress in the fulfillment of such objectives as a condition for entering a trade agreement (section 2103 (b)(2)). The

definition of negotiating objectives gives Congress influence throughout trade negotiations.

20 *During the negotiations,* Congress has imposed increasingly demanding consultation requirements, granting an ever-greater number of lawmakers with access to trade negotiators. Here again, the BTPAA provided the framework for such oversight. This trade law established strict requirements and guidelines regarding notification to Congress and consultation both before and during trade negotiations.[18] To enforce the Executive's obligations, Congress retains the right not to implement bills "for lack of notice or consultation" with Congress or the Congressional Oversight Group. In theory, it can also adopt a "procedural disapproval" in each chamber to signal its discontent over the consultation of Congress and thereby influence the trade agreement before it is finalized (Fergusson, 2015). In practice, however, efforts to keep lawmakers informed have often been hampered by strict confidentiality rules regulating access to negotiating texts. The 2015 BCTPAA imposed new transparency on the Executive branch by creating the position of "Chief Transparency Officer" within the USTR and by requiring that the latter develop clear guidelines beyond the established framework for consultations with Congress, the public as well as trade advisory committees (Velut, 2021).

21 Finally, legislative control over trade policymaking also applies *after the negotiations*, despite the constraints imposed on congressional ratification under trade promotion authority. This stems from two reasons. First, as mentioned earlier, Congress retains the power to refuse expedited procedure if it deems that the President has failed to meet consultation and reporting requirements. Second, if in theory, trade promotion authority bans amendments on trade agreements, in practice, lawmakers have managed to extract a variety of concessions from the President in exchange for their vote. These concessions are of three kinds. In the tradition of "pork-barrel politics," the President can promise funding for a lawmaker’s pet project – although, in practice, these promises are rarely kept.[19] Additionally, legislators can obtain import-protection that may or may not be related to the trade agreement under consideration. These protectionist side-payments have, of course, a long tradition, but have spared few if any presidents in the fast track era.[20] For instance, during the debates on DR-CAFTA, the Bush administration managed to secure the vote of five lawmakers, and possibly obtain the abstention of two additional lawmakers from textile states by announcing new quotas on cotton shirts, trousers, and underwear from China (Becker, 2005). Last, but not least, against the spirit of fast track, Congress has often managed to re-open negotiations after the signature of trade deals. This was the case with the creation of side agreements under NAFTA, the re-opening of FTA negotiations with Peru, Korea, and Colombia, and the addition of side letters to trade agreements designed to address specific (often sectoral) concerns by certain congress members and that require the signature of both negotiating parties. Of course, within the framework of inter-branch relations, not all concessions to lawmakers are equal: while certain addenda to trade agreements (e.g. NAFTA's side agreements on labor and the environment) can be legitimately interpreted as attempts to make trade policy more accountable to all trade policy stakeholders, other secret deals designed to buy out votes in Congress tend to shift the process away from accountability.

3.2 From theory to practice

22 On paper at least, greater congressional scrutiny should mean that the trade policy process might become more accountable. In practice, there is ample evidence that Congress has played an important role in all major trade negotiations. The well-documented rounds of political bargaining surrounding the first negotiation of NAFTA under both Presidents George H. W. Bush and Bill Clinton confirm that, even under fast track authority, Congress played an important role in shaping the negotiations (Mayer, 1998; Cameron & Maxwell, 2001). Similarly, Clinton's failure to obtain fast track authority in 1997 and 1998 confirms that Executive empowerment hinges on congressional approval, while George W. Bush's ability to renew trade promotion authority and secure congressional ratification of DR-CAFTA, among other trade agreements, depended on the strong support of his party in Congress. Of course, the rise of extreme partisan polarization has dramatically altered these dynamics, but from an institutional standpoint, Congress retains many of the cards to exert oversight over trade negotiations. This was clear through both the negotiations of TPP and the US-Mexico-Canada Agreement (USMCA), even though they were undertaken under two very different presidencies. One foreign negotiator underlined the limited leeway granted to his American counterpart during both TPP and USMCA negotiations, deeming the negotiating objectives established by Congress as more important than the instructions of the US chief negotiator.[21] For better or worse, the power of congressional oversight was in full display when lawmakers declined to bring TPP to a vote at the end of the Obama presidency. Although Republican reticence was arguably infused with partisan politics, opposition transcended party lines, as witnessed by Hillary Clinton's *volte-face* against a trade deal that she had spent years promoting.

23 Given its expansive conception of executive powers, the Trump administration constitutes a perfect case study to assess the resilience of congressional oversight. In effect, there is evidence that the White House tested the framework that the legislative branch had gradually established to control negotiations. Throughout the USCMA negotiations, Democrats repeatedly criticized the Trump administration for ignoring consultation requirements under trade promotion authority (Pascrell, 2019). The New Democrat coalition, who had provided crucial support to the renewal of trade promotion authority in 2015 felt particularly isolated. In the words of one senior congressional staffer:

> "The lack of engagement from USTR is troubling, but not surprising. We have made it clear for months our willingness to engage in these discussions and USTR has not followed through. As our members' said at the recent press conference, we must be involved in the takeoff, not just the landing. We are past takeoff, but perhaps Captain Lighthizer could check in with the control tower before he starts his descent" (cited in Cassella, 2018).

24 Particularly frustrating for pro-trade Democrats was the fact that USTR Robert Lighthizer seemed to devote greater attention to potential NAFTA opponents on the left, including union-backed Democrats and fair trade critics like Public Citizen Global Trade Watch Director Lori Wallach. This might explain why the new USCMA went arguably further in the protection of labor rights than TPP, and why it eliminated ISDS. The attention given to left-leaning Democrats was driven by strategic calculation over the prospect of congressional ratification but reflected a targeted legislative strategy, rather than deference to congressional oversight.

25 The lesson of the USMCA regarding interbranch relations is that legislative politics often prime over institutional mechanisms. Not only was consultation with Congress largely driven by vote tallying, confining consultation to swing voters, but lawmakers' ability to bring a "procedural disapproval" is constrained by partisan politics. In a context of hyperpartisanship, a divided Congress (with a Democratic majority in the House and a Republican-led Senate) is unlikely to unite to disapprove of the President's lack of consultation with Congress. In this case, Republican lawmakers were more attached to the party and their leader than to the democratic rules governing trade policy. Thus, in practice, congressional oversight continues to be concentrated at the beginning and the end of the trade policy process – i.e. when lawmakers renew fast track and when they ratify the agreement – instead of throughout trade negotiations. The key concessions secured by House Democrats under the leadership of Nancy Pelosi in the final negotiations of the USMCA confirms that Congress continues to hold tremendous power over the design of US FTA policy.

26 In another example of this interbranch power struggle, President Trump had raised the threat of unilaterally withdrawing from NAFTA to pressure lawmakers from ratifying the USMCA. The potential use of section 125 of the Trade Act raised alarm in Congress and renewed debates about executive prerogatives and congressional oversight. Yet, if the Trump administration has undoubtedly sought greater executive discretion in the conduct of US trade negotiations, there are reasons to believe that Congress would have prevailed, had President made good on this threat to withdraw from NAFTA. First, under the 1974 TA, Congress retains power over the implementation of trade agreements. This means that absent a Congressional vote to repeal that the NAFTA Implementation Act, the 1994 trade law would subsist even under a formal withdrawal from NAFTA. Second, even if President Trump decided to combine formal NAFTA withdrawal with tariff hikes, Congress could very well thwart his actions, either by voting on a resolution of disapproval on NAFTA withdrawal or by deciding to restrain Executive power. Third, as Douglas Irwin notes, unilateral withdrawal from NAFTA would likely prompt challenges in court (Aleem, 2017). Given Congress's authority to regulate commerce under the Constitution, courts would likely side with the legislature in the event of inter-branch conflicts over trade powers. [22]This explains why after the signature of the USMCA, and under the recommendation of USTR Robert Lighthizer, Donald Trump toned down his threat to withdraw from NAFTA to force Congress to vote on the USMCA.

27 In short, these examples challenge common representations of an all-powerful Executive capturing the policy process. Indeed, successive trade reforms since 1974 have sought to rebalance the policy process in favor of the legislative branch, endowing Congress with several instruments to defend its constitutional powers at different stages of the trade-negotiating process. In theory, these institutional mechanisms maintain the constitutional functions assigned to Congress to "regulate commerce." Yet, in trade politics as elsewhere, the dynamics of partisan polarization have dulled the sharp edge of democratic governance embedded in decades of institutional reforms. The next section assesses the nature of inter-branch relations concerning the use of trade remedies.

04. Interbranch conflicts over trade remedies

28 From the early negotiations on NAFTA to the election of Donald Trump, the debates on congressional oversight in trade policymaking focused primarily on trade agreement policy. Washington's shift from its well-established doctrine of "competitive liberalization" to a new mercantilist "America First" agenda gave a new twist to questions of democratic accountability. Before analyzing the consequences of America's protectionist turn on the democratic governance of US trade policy, two points are worth underlining. First, trade remedies are interdependent but distinct policy instruments embedded in different institutional arrangements from the negotiations of trade agreements. Second, protective measures adopted against unfair trade competition have a long tradition in American history (Irwin, 2017). Even the recent period of competitive liberalization was never sealed from the pressure of import-competing interests, nor did the Executive unequivocally adhere to the fabled doctrine of free trade. This section analyzes the institutional framework of protective measures before discussing more recent developments in interbranch relations. It confirms the legacy of the 1974 Trade Act for contemporary interbranch conflicts and draws a contrast between the mechanisms of congressional oversight over protective measures and those designed to constrain trade liberalization.

4.1 The resurgence of institutions of protection

29 As previously mentioned, the 1974 TA was a landmark in the modern history of US protection insofar as it crystallized conflicts over America's trade relations with the rest of the world. Yet, given America's long protectionist tradition, institutions of protection developed long before America's postwar hegemony was challenged by rival powers. Historically, the governance of US protective measures mirrors the evolution of interest group dynamics, the institutional underpinnings and the ideological debates over the delegation of trade-negotiating powers: by transferring its tariff-setting authority to the Executive branch under the 1934 RTAA, Congress, in effect, refrained itself from protecting industries. However, the political economy of import relief is not simply a matter of interplay between the President and Congress, to the extent that it also involves the Tariff Commission, an independent agency established in 1916 and renamed US International Trade Commission (ITC) under the Trade Act of 1974. The ITC assesses whether a domestic industry has suffered a material injury as a result of increased imports associated with tariff liberalization, while the International Trade Administration, hosted under the Department of Commerce evaluates foreign trade practices such as dumping or subsidies.

30 Even before the RTAA sought to isolate Congress from protectionist pressures, the transfer of trade remedies to the Tariff Commission aimed at depoliticizing trade protection. The premise was that letting an independent agency administer trade rules under "objective" criteria would relieve Congress from protectionist pressures while allowing protection to injured industries under specific circumstances (Destler, 2005). The 1974 TA increased the independence of the ITC by lengthening its members' term from six to nine years. In effect, however, both Congress and the President have retained considerable leverage over the administration of trade remedies, although their role varies according to the trade remedy under consideration.

31 Despite its delegation of tariff-setting authority to the Executive, Congress continues to exert influence over trade remedies at both ends of the process. At the beginning of the process, the legislative branch determines the eligibility requirements for import relief in trade law and can, therefore, indirectly determine the likelihood that petitioning industries will be granted protection. For instance, in the 1974 TA, Congress took important steps to make import relief procedures more accessible to domestic industries: 1) by loosening eligibility criteria for section 201,[23] TAA and antidumping procedures[24]; 2) by shortening the CVD and section 337 (IP infringement and unfair trade practices) procedures; 3) by allowing for judicial review of the negative ruling on CVDs.[25] Far from depoliticizing the process, these amendments to US trade law would dramatically increase the number of ITC petitions. At the end of the process, Congressional committees (the House Ways and Means and the Senate Finance Committee) can also exert influence on the ITC decision by testifying before the ITC to support an AD/CVD petition.[26]

32 Yet, if Congress has retained some of its tariff-setting authority, the Executive branch plays a much larger role over the implementation of trade remedies. Historically, the process of congressional delegation of protective measures to the Executive branch followed a separate path from trade agreement policy, which occurred primarily in two forms. First, the President acquired greater authority over retaliatory measures about perceived national security threats. This was the case with the Trading with the Enemy Act of 1917, section 232 of the 1962 TEA, and the International Emergency Economic Powers Act (IIEPA) of 1977. Second, rising concerns over international competition and the proliferation of unfair trade practices led Congress to grant the Executive with new trade defense instruments. These were brought to life in the 1974 TA and reinforced during the US-Japanese trade battles of the 1980s. These developments, summarized in Table 2, illustrate the bicephalous nature – if not its schizophrenia – of US trade policymaking in the twentieth century and the interbranch conflicts that this reform engendered in the next thirty years.

33 What were lawmakers' intentions about the democratic governance of trade remedies and what consequences would these reforms have on interbranch relations? The greater autonomy granted to the ITC, in addition to the delegation of trade remedy powers under the 1974 TA show that Congress was still intent on isolating itself from protectionist pressures, even though it sought to make the institutional apparatus more responsive to domestic industries' concerns over rising international competition.

Table 2: Main US trade remedies

Name and statutory authority	Description	Administering agencies	Usage
Antidumping (AD) Title VII of 1930 Tariff Act as amended	Authorizes imposition of additional import taxes if imports are found to be sold at "less than fair value" and responsible for material injury of domestic industry	ITA, USITC	Most frequently used trade remedy (nearly 1,300 cases between 1980 and 2015)
Countervailing duties (CVD) Tariff Act of 1930, Title VII as amended	Authorizes imposition of additional import taxes if imports are found to be subsidized by a foreign government (designated as "unfair trade practices") and responsible for material injury of domestic industry	ITA, USITC	Second-most used trade remedy (more than 600 cases between 1980 and 2015)
Escape clause /safeguard measure Section 201 of the 1962 Trade Expansion Act, amended under the 1974 Trade Act	Authorizes temporary safeguard measures (tariffs or import quotas) when a rise in imports is found to be a substantial cause of serious injury to a domestic industry	USITC, President	Less commonly used than AD and CVD in recent decades (10 cases between 1995 and 2015)
Unfair imports Section 337 of the 1930 Tariff Act, as amended	Authorizes exclusion order for products imported under unfair competition, related primarily to IP (including patents, trademarks, etc.)	USITC	Often used though less visible: 600 cases between 1980 and 2010
Section 301 of the 1974 Tariff Act	Requires the USTR to take all appropriate actions including trade sanctions to obtain the removal of "unfair" foreign barriers	USTR, President	Nearly 130 cases between 1974 and 2020
"Special 301" Amendment of Section 301 under the 1988 OTCA	Requires the USTR to investigate countries that repeatedly violate trade agreements about IP, and authorizes retaliation under section 301 if in the absence of progress	USTR, President	See above.
"Super 301" Amendment of Section 301 under the 1988 OTCA	Requires the USTR to establish a list of "priority foreign countries" and their unfair trade practices and sets deadlines for removal of trade barriers and retaliatory measures in case of non-compliance	USTR, President	See above. Reinstated under B. Clinton, but hardly used since 1997

Table 3: Less conventional US trade remedies

Name and statutory authority	Summary	Administering agencies	Usage
Section 338 of the 1930 Tariff Act	Authorizes the President to raise tariffs on countries that have discriminated against US trade	President	Very rare. Only used in the 1930s.
Section 232 of the 1962 Trade Expansion Act	Authorizes the President to adopt restrictive measures if a foreign good is imported in such quantities as to threaten national security	Department of Commerce (DOC), President	Limited use: 31 cases between 1962 and 2019; only 8 since 1994 (4 under D. Trump)
Balance-of-payment authority Section 122 on of the 1974 Trade Act	Authorizes the President to impose restrictive measures on imports for up to 150 days in the face of "fundamental international payments problems" including balance-of-payment deficits	President	Never used
Market Disruption Section 406 of the 1974 Trade Act, amended as section 421, under the US-China Relations Act of 2000	Authorizes adoption of temporary or permanent protective measures (tariff increase, quota) in the event of market disruption caused by imports from communist countries (Section 406) or China (Section 421) during 12 years after China's WTO accession	USITC, President	Rarely used for China (only 7 cases over ten years). Expired at the end of 2013.
International Emergency Economic Powers Act (IEEPA) of 1977	Gives the President broad authority to regulate a wide range of trade and financial transactions following a declaration of national emergency.	President	Primarily used in cases related to national security. Used 54 times since 1977.

Source: Author's adaption of Jones (2012, appendix) drawing from various sources including Destler (2005); Bown (2016); Morrison (2019), and Casey et al. (2019).

34 Admittedly, the growing complexity of the institutional apparatus reflected the will to establish checks and balances where Congress, the ITC, and the Executive branch were all assigned a role to defend America's interests against unfair trade practices. Yet, while traditional trade remedies (anti-dumping, safeguard measures and countervailing duties) remain under the purview of the ITC, supposedly immune to political pressures and partisan dynamics, in most other cases, the Executive branch

played a dominant function in the administration of trade rules, whether through the Department of Commerce and its International Trade Administration (e.g. safeguard measures, antidumping and countervailing duties), the USTR (section 301 under its original and amended forms) or the President (section 232, section 301, section 338, etc.). This is largely because the Executive branch was long deemed to be immune to protectionist pressure and more inclined to promote market opening than closure. The irony of contemporary US trade politics is that institutions designed to promote trade openness were hijacked by a President convinced by the virtues of protectionism.

4.2 Adieu Congress? US trade remedies in the Trump era

35 The year 2018 saw a dramatic turn in the history of US trade policy. From section 201 to section 301, to the now notorious section 232 of the 1962 TEA, the United States deployed its trade policy arsenal to impose a barrage of protective measures that were unheard of since the Nixon shock of 1971. In slightly more than twenty months (between January 2018 and September 2019), the Trump administration unleashed no fewer than eight waves of tariffs against its trading partners: 1) the first wave of additional import duties imposed on solar panels (at a 30% tariff rate) and washing machines (20-50%) in January 2018 under a safeguard measure (section 201), affecting $10 billion of US imports; 2) and 3) two waves of tariff increase imposed on steel and aluminum imports (25% and 10% respectively) on behalf of "national security" (section 232), the first (March 2018) applied to most trading partners but exempting Mexico, Canada and the EU, the second ending this exemption (June 2018), affecting a total of $22 billion. Additionally, Washington went into a straight confrontation with Chinese competition by imposing five additional waves of China-specific tariffs: 4) the fourth wave targeted $34 billion of imports taxed at 25% (July 2018); 5) the fifth wave hit another $16 billion of Chinese goods (August 2018); 6) the sixth and largest wave imposed another $200 billion of Chinese imports at 10%; 7) a seventh wave of tariff hikes brought the tariff levels of these targeted imports to 25% effective in June 2019, and an eighth wave increased section 301 tariffs to 15% on a subset of $300 billion worth of products) (Amiti, Redding, & Weinstein, 2019; Bown & Kolb, 2019).

36 Taken separately, these steps are arguably in line with the previous protective measures adopted by other US presidents except for the use of section 232 in the name of national security. For instance, the frequency of traditional trade remedies – antidumping, countervailing duties and safeguard measures – was lower under the Trump presidency than under the administration of Ronald Reagan, when compared with the annual average of the 1980-2018 period (Table 4). However, what distinguished Donald Trump's protectionist policies is not only the combination of these trade remedies but also their share of US imports, as well as their damaging effects on US diplomatic relations.

Table 4: Reagan vs. Trump's protective measures

Annual use of trade remedies relative to 1980-2018 average

	R. REAGAN (1981-1988)	D. TRUMP (2017-2019)
Anti-dumping (AD)	High (49/year)	Average (41/year)
Countervailing duties (CVD)	Very high	Average
Safeguard measures (SGM)	Average	Average
Section 301	High	High
Section 232 (national security)	Slightly above average (1/year)	Above average (nearly 2/year)

Source: Author's calculations based on Bown (2016), updated with 2017 and 2018 data from the WTO.

37 The imposition of tariff measures was only one part of Donald Trump's "trade undiplomacy" – albeit a significant one – to which must be added withdrawal from earlier commitments, diplomatic feuds, conflictual (re)negotiations, threats of trade sanctions, and sustained hostility toward the WTO (Velut, 2018).

38 More rarely acknowledged, however, is the extent to which the US Congress was complicit in allowing the President to disrupt both the checks and balances of US trade governance and the international economic order. Despite strong business mobilization against Donald Trump's protectionist measures – e.g. from the US Chamber of Commerce or the Business Roundtable – lawmakers only half-heartedly attempted to reassert congressional authority over trade policy. As shown earlier, this contrasts with the realm of FTA policy where the legislative branch has made sustained efforts to reclaim its constitutional powers, under both Republican and Democratic Presidents. This discrepancy is largely due to the politics of globalization, and more specifically the enduring appeal of trade-bashing among American voters. The very cautious posturing of candidates in the Democratic primaries on the US-China trade wars was a testament to the enduring power of protectionism (Reinsch & Caporal, 2019; Irwin, 2019).

39 Admittedly, the US-China trade wars prompted congressional debates about restraining executive authority, especially among Democratic congressmen. At the same time, the flurry of trade bills at the committee stage – cited in the introduction of this article – can be puzzling, given that many statutes already grant Congress with the power to repeal protective measures deemed detrimental to US economic interests. For instance, if both Democratic and Republican lawmakers were truly dismayed by President Trump's trade wars, they could very well use their statutory powers to put an end to trade conflicts, e.g. through a resolution of disapproval under section 302 of the 1974 Trade Act. The absence of a strong congressional response to this expansive approach to executive power in trade policymaking was all the more questionable in the face of mounting evidence on the costs of protectionism, both at sectoral and regional levels

(Amiti, Redding, & Weinstein, 2019; Fajgelbaum et al. 2019; Irwin, 2019; Reinsch & Caporal, 2019. In this case, it was the result of extreme partisan polarization, which superseded the logic of shared powers.

40 On the other hand, in a deft strategic move, the Trump administration opted for less conventional trade instruments, pushing trade policies towards the Executive's security turf to insulate itself from congressional oversight: the use of section 232 of the 1962 TEA and the IEEPA being the most prominent example of the trade-security nexus. Yet, here again, Congress retains dramatic power to reclaim its constitutional prerogatives. For instance, section 204 of the IIEPA specifies that "The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this chapter and shall consult regularly with the Congress so long as such authorities are exercised". Under this statute, reinforced by the constitutional powers granted to Congress, the legislative branch could legitimately act to rein in executive action on behalf of national security.

05. Conclusion

41 The current political economy of international trade has exacerbated institutional conflicts over the design of US trade policymaking. Whereas increased international competition has created incentives to centralize power in the executive branch in the hope of a more aggressive trade policy, the broadening of the trade agenda has also prompted Congress to exert greater oversight over the terms of US trade policy. Ratified at the dawn of the globalization era, the 1974 Trade Act crystallized these tensions early on and even contributed to the formation of a form of institutional schizophrenia, where shared powers would ultimately turn into colliding powers.

42 Concerning FTA policy, Congress has made ample use of its statutory powers to provide input at every stage of the decision-making process, even though its influence remains strongest at the end of negotiations. When it comes to trade remedies, however, the legislative branch has been much more ambivalent to use its constitutional authority to restrain, let alone block executive action. This is largely due to the continued appeal of protectionism among US voters, especially the white working class of Rustbelt states, who continue to be a central constituency for the presidential election.

43 The implications of this analysis of interbranch relations in US trade policymaking are two-fold. First, since 1974, under the dual imperative of economic leadership and democratic governance, trade institutions have undergone a bifurcated development where both trade-liberalizing and protective measures developed in both executive and legislative branches. The 1974 Trade Act has played a structuring role in the bicephalous nature of US trade policymaking, heralding a long legacy of interbranch conflicts amidst stormy debates over globalization and the role of the United States in the world economy. Partisan politics interferes with institutional factors in the design of US trade policy and, depending on the distribution of power among political parties, can either exacerbate or mitigate interbranch conflicts. Second, and paradoxically, institutional mechanisms and legislative reforms can only go so far as to preserve a balance of power necessary to address the tensions between democratic governance and international competitiveness. Institutions are only as good as the people that run them, an aphorism that has resonance far beyond the trade realm in the current context of US politics. Beyond the US case, this means that efforts to curtail

protectionism cannot be confined to institutional reforms and technocratic solutions, but must address the roots of globalization fatigue.[27]

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NOTES

1. See, for instance, Baldwin & Magee (2000); Biglaiser, Jackson, and Peake (2004).
2. This paragraph draws from Destler (2005) and Fergusson (2015).
3. In the words of Senator Russell B. Long (D, LA), the United States had become "the least favored nation." (cited in Irwin, 2017, p. 550).
4. According to section 102 of the 1974 TA: "The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and non-discriminatory trade among nations. *The President is urged to take all appropriate and feasible steps within his power* (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. (emphasis added)."
5. Under section 102, the term "barrier" was not clearly defined, but only specified as including "the American selling prices basis of customs evaluation as defined (...) in the Tariff Act of 1930. The term "distortion" was merely said to include "a subsidy," and "international trade" encapsulated both goods and services. This would be later refined under section 305(d) of Trade and Tariff Act of 1984, which amended these elusive definitions to include "(1) barriers to the establishment in foreign markets, and (2) restrictions on the operation of enterprises in foreign markets, including - (A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and (B) restrictions on the use of data processing facilities within or outside of such country or instrumentality."
6. The Trade Expansion Act of 1962 said nothing about the staff or location of the STR, which was only defined by President Kennedy under Executive Order 11075 in 1963 (Destler, 2005, pp. 103-107).
7. While section 125 arguably falls under trade agreement policy, withdrawal from an agreement can also be paired with additional tariff measures under section 201 or others: "the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, to exercise the rights or fulfill the obligations of the United States" (19 USC 1351).
8. Section 301 exhorts the President to "take all appropriate and feasible steps within his power to obtain the elimination of such restrictions or subsidies." Such actions included (A) the suspension or withdrawal of a trade agreement; and B) the imposition of duties or import restrictions on goods and services.
9. Section 401 (4)(a) of the Trade and Tariff Act of 1984 (1984 TTA) amended the 1974 TA and allowed, for the first time, the negotiation of bilateral agreements under certain conditions. These included the US-Israel and US-Canada free trade agreements.

10. For a chronology of cycles of regionalism, see Mansfield & Milner (1999); Velut (2018); Deblock (2018).

11. Congress asked the President to submit an evaluation of the fulfillment of negotiating objectives if he determined that competitive opportunities in a (set of) sector(s) would be significantly affected by a trade agreement (section 104(d) of the 1974 TA).

12. A decade later, the 1984 TTA would draw more specific objectives in services, FDI, and high technology products.

13. For instance, section 302 allowed Congress to annul executive action under 301 through a resolution of disapproval. Withdrawal from trade agreements under section 125 is also conditioned upon notification to Congress, as President Trump was reminded when he considered withdrawing from NAFTA. Additionally, section 203 also authorized Congress to supersede a presidential action differing from the recommendations of the ITC through a concurrent resolution approved in each House.

14. The "May 10th deal" of 2007 was an attempt to bridge the partisan divide over trade policy. The bipartisan trade deal between the new Democratic majority in Congress and the Bush administration would not only provide guidelines for the renegotiation of recently signed trade agreements like the US-Peru FTA but also inform the extension of negotiating objectives for the renewal of trade promotion authority in 2015.

15. As Destler (2005) argues, although designed to empower the Executive, in effect, the fast track also forces the President to obtain two votes from Congress instead of one, the first one granting him with negotiating powers and the second one ratifying a trade agreement.

16. Fergusson and Davis (2019, p. 28).

17. Overall main objectives are broadly defined as (1) "to obtain more open, equitable and reciprocal market access", (4) "to foster economic growth, raise living standards, enhance the competitiveness of the United States, promote full employment in the US, and enhance the global economy" etc. Principal negotiating objectives are more specific and apply to trade in goods, trade in services, trade in agriculture, foreign investment, IP, digital trade, regulatory practices, SOEs, localization barriers to trade, labor, and the environment, currency issues, WTO and multilateral trade agreements, transparency, anti-corruption, dispute settlement and enforcement, trade remedy laws, border taxes, textile, commercial partnerships, good governance. Capacity-building and other priorities consist of technical assistance to trading partners. P.L. 14-26, June 29, 2015, section 102, available at https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf

18. . Section 2107 (b)(2)(C) called for "the closest practicable coordination between the Trade Representative and the Congressional Oversight Group *at all critical periods during the negotiations*, including at negotiation sites" (emphasis added).

19. Public Citizen's study of 2005 revealed that between 1992 and 2004 (before the CAFTA vote), presidents had made 92 deals with congress members, 82.6% of which were "unkept, reversed or meaningless." Public Citizen (2005).

20. Examples abound from Jimmy Carter to Ronald Reagan to Bill Clinton and George W. Bush. For a discussion, see Nivola (1986); Public Citizen (2005).

21. Anonymous, phone interview with the author, April 18, 2019.

22. The extent to which trade agreements fall under the Executive's foreign relations powers is subject to debate. Gary Clyde Hufbauer (2017). For a broader discussion, see Murrill (2019).

23. Under the 1974 TA, the ITC had to find that rising imports were a "substantial cause" of material injury for domestic industry, instead of a "major cause" under the 1962 TEA.

24. As Destler (2005, 143), this was done by altering the pricing method of domestic goods for antidumping cases.

25. By contrast, in a context more favorable to trade liberalization, Congress had voted to restrict eligibility criteria for the escape clause under the 1962 TEA.

26. Other forms of *ex-ante* controls include ITC appointments of former congressional staffers, while *ex-post* controls entail threats of budget cuts or transfer of authority to another agency. For a review of the literature on ITC oversight, see Caddel (2014).

27. On this point, in the context of the UK's post-Brexit trade policy, see Siles-Brügge (2019).

ABSTRACTS

This article analyzes the growing interbranch conflicts inherent to the design of US trade policymaking and the search for a balance of power between the legislative and the executive branches amidst recurrent debates on the merits of globalization. To do so, it traces the origins of these institutional battles and maps out these conflicts across different instruments of the trade policy apparatus. Additionally, it explores the drivers of executive-legislative contention and assesses its complex relations with partisan polarization. The conclusions are two-fold. First, since 1974, under the dual imperative of economic leadership and democratic governance, trade institutions have undergone a bifurcated development where both trade-liberalizing and protective measures developed in both executive and legislative branches. The 1974 Trade Act has played a structuring role in the bicephalous transformation of US trade policymaking, heralding a long legacy of interbranch conflicts amidst stormy debates over globalization and the role that the United States should play in the world economy. Second, in a context of hyperpolarization, institutional mechanisms and legislative reforms can only go so far as to preserve a balance of power necessary to address the tensions between democratic governance and international competitiveness. Beyond the US case, this means that efforts to curtail protectionism cannot be confined to policy recommendations and technocratic solutions, but must address the political and ideological roots of the current globalization fatigue.

Cet article analyse les conflits inter-branches inhérents à l'appareil institutionnel de la politique commerciale américaine et la recherche d'un équilibre des pouvoirs entre le législatif et l'exécutif, au milieu de débats récurrents sur les bienfaits de la mondialisation. Il retrace ainsi les origines de ces batailles institutionnelles et cartographie ces conflits au sein des différents instruments de la politique commerciale. En outre, cette analyse explore les déterminants de cette opposition entre l'exécutif et le législatif et évalue ses relations complexes avec la polarisation partisane. Les conclusions sont doubles. Premièrement, depuis 1974, sous le double impératif de la primauté économique et de la gouvernance démocratique, les institutions commerciales ont connu un processus de bifurcation par lequel des mesures de libéralisation et de protection se sont développées à la fois au sein de l'exécutif et du pouvoir législatif. Le *Trade Act* de 1974 a joué un rôle structurant dans cette transformation bicéphale de la politique commerciale américaine, amorçant une longue série de conflits institutionnels au milieu de débats houleux sur la mondialisation et sur le rôle des États-Unis dans l'économie mondiale. Deuxièmement, dans un contexte d'hyperpolarisation, les mécanismes institutionnels et les réformes législatives peuvent difficilement préserver l'équilibre des pouvoirs nécessaire pour faire face aux tensions entre gouvernance démocratique et compétitivité internationale. Au-delà du cas américain, les efforts visant à contenir le protectionnisme ne peuvent se limiter aux recommandations politiques et aux solutions technocratiques, mais doivent s'attaquer aux racines politiques et idéologiques du désamour des peuples vis-à-vis de la mondialisation.

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